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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,353	09/26/2000	David W. Pennington	1417Q P 279	4575

7590

12/04/2002

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EXAMINER

LAM, ANN Y

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

LC

<b>Office Action Summary</b>	<b>Applicati n No.</b>		<b>Applicant(s)</b>	
	09/669,353		PENNINGTON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Ann Y. Lam		3763	

-- Th MAILING DATE of this communication app ars on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2002.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-11, 14 and 16-37 is/are rejected.
- 7) ☒ Claim(s) 5-8, 12, 13 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                                              |                                                                             |
|--------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other:                                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4, 9-11, 14, 16 and 18-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duronio et al., 6,328,229.

Duronio et al. discloses the invention substantially as claimed. More specifically, Duronio et al. discloses a tubular component (distal end of 16) ; a spray tip assembly (12) attached to the tubing, the spray tip assembly comprising: a first mechanical breakup unit (26) having at least one feed port (see proximal end of 26) configured to direct a fluid into a first spin chamber and issue into a first exit port (55a), and a second mechanical breakup unit (18) positioned alongside the first mechanical breakup unit and having at least one feed port (see proximal end of 28) configured to direct a fluid into a second spin chamber and issue into a second exit port (55b), wherein the first and second exit ports extend through the external surface of the spray tip, see figures 5 and 6.

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As to claim 2, a first funneling portion (see 26 in Figure 5) adjacent the first spin chamber and having a sloped sidewall configured to direct the fluid issuing into the first exit port; and a second funneling portion as claimed are disclosed.

As to claim 3, the device is dimensioned to produce a spray from the exit ports and a force of a single magnitude is used to propel fluid as claimed, see column 4, line 58 – column 5, line 9.

As to claim 4, a first fluid source (16) in fluid communication via the tubular component with at least one first feed conduit and a second fluid source (18) as claimed, wherein the at least two conduits deliver fluid to different mechanical breakup units are disclosed.

As to claims 9 and 10, the fluids are fibrinogen and thrombin, see column 1, lines 18-19.

As to claim 14, feed ports (see proximal ends of 26 and 28) directing fluid from the feed conduits to the spin chamber of each mechanical breakup unit are disclosed.

As to claim 16, at least one additional conduit (50) is positioned through the spray unit assembly.

However Duronio et al. does not disclose that the spray tip assembly has a diameter of at most about 12 mm. Also, as to claims 18-37, Duronio et al. does not disclose specifically the rate at which the fluid exits the device, nor the diameter of the spin chambers, nor the angle of the sloped sidewall, nor the width of the feed ports, nor the height of the feed ports, nor the diameter of the exit port, nor the length of the exit port, nor the length of the exit port, nor the ratio of the diameter of the spin chamber to

the diameter of the exit port, nor the ratio of the width of the feed port to the height of the feed port, nor the ratio of the length of the exit port to the diameter of the exit port, nor the ratio of the length of the spin chamber to the diameter of the exit port, nor the ratio of the exit port length to the exit port diameter, nor the diameter of the spray tip assembly, nor the diameter of the spray tip.

However, Duronio et al. discloses that varying the dimensions of the device may be made without deviating from the scope of the invention, see for example, column 4, lines 14-17, and column 5, lines 3-9, and lines 26-28 and lines 47-64, where Duronio discloses that having dimensions in certain ratios is preferable. It would have been obvious to provide a device as taught by Duronio et al. in the specific dimensions or ratios as claimed by Applicant, since such dimensions or ratios would not depart from the scope of the invention as taught by Duronio et al.

2. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duronio et al., 6,328,229, in view of Sawhney et al., 6,121,341.

Duronio et al. discloses the invention substantially as claimed, except for the additional conduit being an optical fiber.

Sawhney et al. discloses a device for dispensing a fluid to a tissue surface with two chambers for receiving fluids, and an optical fiber (106) to deliver light from a remote source for illumination during use of the device, see column 2, line 64 – column 3, line 7, and column 13, lines 37-56. It would have been obvious to combine Sawhney et al. with Duronio et al. since both disclose a device having two chambers for receiving

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fluids, the device being used for dispensing a fluid to a tissue surface. Specifically, it would have been obvious to provide an optical fiber as taught by Sawhney et al. in the Duronio et al. device, as it would be desirable for illumination of the treated site, as taught by Sawhney et al.

***Allowable Subject Matter***

3. Claims 5-8, 12, 13 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Delmontte et al., 5,989,215, Epstein et al., 6,063,055, and Fukunaga et al., 5,582,596, all disclose a fluid dispensing device with multiple fluid sources.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on T-F 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (703)308-3552. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

A.L.

December 2, 2002

  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER

12/02/02